*THE HONOURABLE SRI JUSTICE RAMESH RANGANATHAN

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+ WRIT PETITION Nos. 8951 and 26587 of 1995

% 23-6-2005

M/S Hindustan Cables Ltd, rep. by its chief general manager,
Hyderabad (petitioner in W.P.No.8951/95)

S.Gopal s/o Sathaiah
H.no 162, Kamalanagar,Kandhiguda J,J,Nagar Colony
Hyderabad (petitioner in W.P.No.26587/95)

PETITIONER

VS.

$ S.Gopal S/O Sattaiah
H.no 162, Kamala Nagar, Khandiguda, J.J Nagar colony Secunderabad
Respondent in W.P.8951/95)

The Hindustan Cabels ltd rep by its Executive, Director Hindustan Cabels, Hyderabad (respondent in W.P.26587/95)

RESPONDENT

! Counsel for the Petitioner: Mr.V.Venkataramana

^ Counsel for the Respondent : Mr.B.G.Ravinder Reddy

< Gist:

> Head Note:

? CITATIONS:

1. 2004(6) SCC 482

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY THIRD DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO : 8951 of 1995

Between:

M/S Hindustan Cables Ltd, rep. by its chief general manager,
Hyderabad

..... PETITIONER

AND

1 Additional Industrial Tribunal Cum
Additional Labour Court, hyderabad
2 S.Gopal S/O Sattaiah
H.no 162, Kamala Nagar, Khandiguda, J.J Nagar colony Secunderabad

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of certiorari or any other appropriate writ and quash the award of the first respondent in I.D.No 414 of 1993, passed in favour of the second respondent and grant such other relief as it deems fit in the circumstances of the case.

Counsel for the Petitioner: MR.V.VENKATARAMANA

Counsel for the Respondent No.: MR.B.G.RAVINDER REDDY

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WRIT PETITION NO : 26587 of 1995

Between:

S.Gopal s/o Sathaiah
H.no 162, Kamalanagar,Kandhiguda J,J,Nagar Colony
Hyderabad

..... petitioner

and

1 The Hindustan Cabels ltd rep by its Executive, Director Hindustan Cabels, Hyderabad
2 The Additional industrial tribunal-cum-Addl. Labour court
Hyderabad

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ particularly one in the nature of certiorari, calling for the records, on the file of the Addl. Industrial-Tribunal-cum Addl. Labour Court. Hyderabad in I.D.no 414/93 dt 7-12-94 and quash the award to the extent of not granting the back wages and consequently to direct the management to pay the petitioner the back wages from the date of removal to the date of award and pass such other orders as this Hon'ble Court may deem fit and proper.

Counsel for the Petitioner: MR.B.G.RAVINDER REDDY

Counsel for the Respondent : MR.V.VENKATARAMANA

The Court made the following :

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

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WRIT PETITION NOs : 8951 and 26587 of 1995

COMMON ORDER:

W.P.No.8951 of 1995 is filed by M/s Hindustan Cables Limited, represented by its Chief General Manager, Hyderabad against the Award, dated 07.12.1994, in I.D.No.414 of 1993 of the Additional Industrial Tribunal-cum Additional Labour Court, Hyderabad.

W.P.No.26587 of 1995 is filed by the workman challenging the same Award in I.D.No.414 of 1993, dated 07.12.1994, to the extent of not being granted back-wages while seeking consequential direction to the management to pay back-wages from the date of removal till the date of the Award.

Since both the writ petitions are filed against the same award in I.D.No.414 of 1993, dated 07.12.1994, they are being disposed of by a common order.

The facts relevant for the purpose of these writ petitions are that:

The petitioner in W.P.No.26587 of 1995 (hereinafter referred to as workman) was working as Security Guard in M/s Hindustan Cables Limited (hereinafter referred to as employer). The workman was alleged to have committed theft of certain copper coils on 20.09.1985. The employer gave a police complaint regarding the theft allegedly committed by the workman, initiated disciplinary action and issued charge memo dated 21.9.1985, levelling charges of theft against the workman. An enquiry officer was appointed, vide proceedings dated 21.12.1985, to enquire into the alleged misconduct of theft. The workman did not participate in the enquiry and did not avail the opportunity to defend himself against the said charges. The enquiry officer submitted his report holding the workman guilty of misconduct of committing theft of 46 copper coils belonging to the company. Inasmuch as the charge of theft, held proved against the workman, was serious the employer passed an order, dated 05.08.1986, removing the workman from service.

Pursuant to the criminal complaint lodged by the employer, C.C.No.455 of 1985 was instituted against the workman. Initially, the Additional Judicial First Class Magistrate, Hyderabad, East and North, Ranga Reddy District by Judgment, dated

08.09.1988, convicted the workman of the offence, but released him under the Probation of Offenders Act. The workman filed Criminal Appeal No.36 of 1988 before the District and Sessions Judge, Ranga Reddy District and the appellate Court allowed the said Criminal Appeal on 18.12.1989. The workman was acquitted on the ground that the prosecution had failed to prove his guilt beyond all reasonable doubt.

In the case on hand, the disciplinary proceedings instituted against the workman culminated in imposition of punishment of removal from service by order dated 05.08.1986, more than three years much prior to his acquittal, by the District and Sessions Judge, Ranga Reddy District, in Crl.A.No.36 of 1998 dated 18.12.1989.

The workman filed an application under Section 2(a)(2) of the Industrial Disputes Act in I.D.NO.414 of 1993 before the Additional Industrial Tribunal cum Additional Labour Court, Hyderabad challenging the order of removal dated 05.08.1986. The Additional Industrial Tribunal cum Labour Court while taking note of the fact that the evidence of the management recorded in the domestic enquiry remained unchallenged held that since the criminal Court had appreciated the evidence and acquitted the petitioner, he was entitled to re-instatement. The Additional Industrial Tribunal cum Additional Labour Court further held that since the workman was out of employment since 1985 and had raised the I.D. more than two years after he was acquitted in the criminal case by the appellate Court he was not entitled for back wages. An order was passed directing the employer to re-instate the workman with continuity of service, and the workman was held not to be entitled for back-wages or any other monetary benefits.

Sri Vedula Srinivas, learned counsel for the employer draws my attention to the judgment of the Supreme Court in "**ALLAHABAD DISTRICT COOPERATIVE BANK LTD.,ALLAHABAD v VIDHYA VARIDH MISHRA**" wherein at paragraph 12 the Hon'ble Supreme Court held that in a disciplinary inquiry a conclusion different from that arrived at by a criminal court may be arrived at, that strict burden of proof required to establish guilt in a criminal court was not required in disciplinary proceedings and when an order of termination is passed on the findings of the disciplinary committee, the fact that the criminal Court has exonerated the workman in the criminal case was of no consequence. It is contended by Sri Vedula Srinivas,

learned counsel for the employer that since the Additional Industrial Tribunal cum Additional Labour Court relied solely on acquittal of the workman in the Criminal case, in ordering reinstatement, the award was liable to be set aside.

Sri B.G.Ravindra Reddy, learned counsel appearing for the workman placed reliance on the earlier judgment of this Court in **MANAGEMENT, SINGARENI COLLERIES, KALYANKHANI v INDUSTRIA TRIBUNAL, HYDERABAD AND OTHERS** in support of his contention that the disciplinary authority is bound to take into account the judicial pronouncement of the criminal court, give due weight thereto and that it was not open to the employer to ignore the judgment of the criminal court, in disciplinary proceedings.

The judgment in Singareni Colleries case (2 supra) has no application to the facts of the present case since the punishment imposed pursuant to the disciplinary proceedings were much prior to the workman's acquittal in the criminal case.

As referred to supra the punishment of removal imposed on the workman by order, dated 05.08.1986 was pursuant to a domestic enquiry wherein the workman was found guilty of the charge of theft of 46 copper coils belonging to the employer. The petitioner was acquitted in Criminal Appeal No.36 of 1988 only on 18.12.1989, more than three years after the punishment of removal was imposed on him in the disciplinary proceedings initiated against the workman. Since the punishment imposed on the workman pursuant to disciplinary enquiry was more than three years prior to his acquittal by the Sessions Court, the question of the findings of the Criminal Court being taken into consideration by the domestic tribunal, while passing the order of punishment, does not arise.

The learned counsel also relies on the judgment of this Court in **SK.AHMED v. LABOURT** and the judgment of the Supreme Court in **CAPT. M.PAUL ANTHONY v BHARAT GOLD MINES LTD**. In Paul Anthony's case (4 supra) the question which arose for consideration before the Supreme Court was whether departmental proceedings and proceedings in a criminal case launched on the same set of facts could be continued simultaneously. The Supreme Court held that departmental proceedings and proceedings in the criminal case could proceed simultaneously, except where the charge in the criminal case against the delinquent employee was of a grave nature involving complicated questions of law and fact in which event it would be desirable to stay departmental proceedings till completion of the criminal

case. The Supreme Court set aside the order of punishment imposed in the departmental enquiry as the employee was held as not being able to participate in the enquiry on account of non-payment of subsistence allowance. Having regard to the fact that 14 years had lapsed, the Supreme Court held that fresh departmental enquiry could not be directed to be initiated. The judgment of the Supreme Court in Paul Anthony's case also has no application to the facts of the present case wherein the punishment imposed pursuant to the domestic enquiry was much prior to the workman's acquittal in the criminal case.

In Sk.Ahmed's case (3 supra) this Court at para 26 held thus:

"It may be true that acquittal of an employee of the charges in a criminal case may have some bearing in considering the proportionality of punishment by the Labour Court in exercise of its jurisdiction under Section 11-A of the Act. But the judgment of the Criminal Court cannot be held to be conclusive. The Labour Court is not bound by the judgment of the Criminal Court. The Labour Court is not bound to direct the reinstatement of an employee into service on the sole ground of employee's acquittal even on merits in the criminal case. It may be one of the factors to be taken into consideration in awarding appropriate punishment in exercise of its jurisdiction under Section 11-A of the Act. The same principle would apply to the proceedings before the disciplinary authorities."

While acquittal of the workman in the criminal case may be one of the factors to be taken into consideration in awarding appropriate punishment in exercise of its jurisdiction under Section 11-A of the Industrial Disputes Act, Industrial Tribunals/Labour Courts cannot direct reinstatement solely on the ground of the workman's acquittal in the criminal case as was done in the present case.

Sri B.G.Ravinder Reddy further submits that the Labour Court had failed to decide the validity of the domestic enquiry or to permit parties to adduce evidence. He further contendeds that the matter should now be remanded to the Industrial Tribunal directing it to firstly decide the validity of the domestic enquiry. He submits that in case the domestic enquiry is held to be valid the Industrial Tribunal has to exercise its powers under Section 11-A, appreciate the evidence on record and record its findings on the quantum of punishment imposed. Sri B.G.Ravinder Reddy further submits that in case the domestic enquiry is held invalid, the parties are required to be permitted to adduce fresh evidence, before the Industrial Tribunal exercises its

powers under Section 11-A of the Industrial Disputes Act.

These submissions of Sri B.G.Ravinder Reddy, learned counsel for the workman, placing reliance on the principles enunciated in Sk.Ahmed's case (3 supra), have considerable force. Failure of Industrial Tribunals/Labour Courts to exercise jurisdiction (or exercise powers under Section 11-A of the Industrial Disputes Act) is a jurisdictional error which requires intervention/correction by this Court in exercise of its Certiorari jurisdiction under Article 226 of the Constitution of India. Inasmuch as the punishment of removal imposed by the employer was set aside, by the Additional Industrial Tribunal, Hyderabad, based solely on the workman's subsequent acquittal in the criminal case, the award in I.D.No.414 of 1993 dated 7-12-1994 is hereby set aside and the matter is remanded for consideration afresh.

The Additional Industrial Tribunal, Hyderabad shall, in the first instance, decide the validity of the domestic enquiry and in case the validity of the domestic enquiry is upheld, it shall exercise the powers conferred on it under Section 11-A of the Industrial Disputes Act, appreciate the evidence on record and decide as to the quantum of punishment.

If, on the other hand, the Additional Industrial Tribunal is of the view that the domestic enquiry is not valid, it shall permit the employer to let in evidence in support of the charge and the workman to adduce evidence in his defence and thereafter exercise its powers under Section 11-A of the Industrial Disputes Act.

Needless to state that since the dispute in I.D.No.414 of 1993 relates to the year 1993, and more than eleven years have elapsed since then, the matter requires expeditious disposal. The Additional Industrial Tribunal is therefore directed to complete the enquiry and pass the award as expeditiously as possible not later than three months from the date of receipt of a copy of the order.

The writ petition is disposed of accordingly. No costs.

-6-2005

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To:

1. One Fair copy to the Hon'ble Sri Justice Ramesh Ranganathan (for his Lordship's kind perusal)

2 The Director Hindustan Cabels Ltd.,, Hyderabad
3 The Additional industrial tribunal-cum-Addl. Labour court
Hyderabad

4. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.

5. The Secretary, A.P. Advocates Association Library, High Court, Buildings, Hyderabad.

6. Two C.D. copies